

IN THE MATTER OF	:	BEFORE THE
<b>LANNETTE RICE</b>	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 07-036V

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**DECISION AND ORDER**

On February 11, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Lannette Rice for a variance to reduce the 30-foot side setback to 10 feet for a retaining wall in an RC-DEO (Rural Conservation-Density Exchange Option) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The property owner Lannette Rice testified in support of the petition. No one appeared in opposition to the petition.

**FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property is located in the 4<sup>th</sup> Election District on the west side of West Watersville Road and is also known as 628 Watersville Road (the "Property"). The Property is

identified on Tax Map 2, Block 13, as Parcel 73 and is zoned RC-DEO (Rural Conservation-Density Exchange Option).

2. The Property is an irregular wedge shaped, 7.5-acre parcel situated at the end of a shared pipestem driveway accessed from West Watersville Road. The northwest rear lot line adjoins a railroad right-of-way ("ROW"), beyond which runs the South Branch of the Pataspco River. The northeast and southwest side lot lines run generally parallel to the railroad ROW. The southeast front line runs at a sharp angle to the northeast side lot line.

3. The Property is improved with an approximately 2,300-square foot, two-story dwelling situated about mid-center on the site. A 45' by 42' addition and garage was recently added to the dwelling's east and rear sides. The addition sits about 35 feet from the northeast side lot line and about 177 feet from the rear property line. Access to the Property is first gained by a shared pipestem driveway extending from West Watersville Road to the Property's southeast corner. From here, a switchback driveway runs from the southeast corner and ends in a paved parking area to the eastern side of the garage.

4. The entire Property slopes down considerably from the "high" ground where the shared pipestem driveway ends to the railroad ROW and river, the boundary line between Howard and Carroll Counties. The septic field is situated to the dwelling's west and north. The Property is heavily wooded.

5. The Petitioner testified that the retaining wall was necessary because there is a 20-foot difference in elevation between the two sides of the garage/addition. She initially wanted to construct the addition on the other side of the house, but the County told her she could not run a road through the septic area. She could not relocate the septic field because area soil conditions and rock formations limit potential drainage areas.

6. Vicinal properties. Adjacent properties are zoned RC-DEO. With the exception of 622 West Watersville Road, the large-lot properties are improved with single-family detached dwellings.

7. The Petitioner, the property owner, is requesting a retroactive variance for the retaining wall. Describing the adjoining properties, she stated that there is no house on 622 West Watersville Road and that its well and septic are on the opposite side of the property. She also stated that one adjoining neighbor's property is flat and the other has a moderate slope. The neighbors at 616 (to the south) cannot see the retaining wall because there are trees in front of and behind her house. The retaining wall is also designed to accommodate drainage and prevent erosion and the driveway was curbed several years ago to prevent erosion.

### **CONCLUSIONS OF LAW**

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I conclude the requested variance complies with Section 130.B.2.a and is therefore granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

2. With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thus.

In the zoning context, the ‘unique’ aspect of a variance requirement *does not refer to the extent of improvements upon the property*, or upon neighboring property. ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls.

*North v. St. Mary’s County*, 99 Md. App. 502, 514, 638 A.2d 1175 (1994)(italics added).

In this case, the Property's topography, irregular shape, and the location of the septic field constitute unique physical conditions that result in practical difficulties in complying strictly with the setback requirements of the Zoning Regulations for properties within the RR-DEO zoning district, in accordance with Section 130.B.2.a(1).

3. The granting of the variance will enable the Petitioner to maintain the retaining wall at its present location. The nature and intensity of the use will not be changed. I therefore conclude the variance, if granted, will not alter the character of the neighborhood in which the Property is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare as required by Section 130.B.2.a(2).

4. The practical difficulty in complying strictly with the setback regulations arises from the irregular shape and topography of the lot as well as the location of the septic field on the Property, and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

5. The variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

**ORDER**

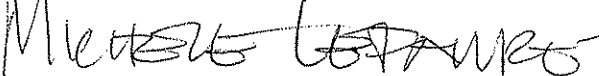
Based upon the foregoing, it is this 6<sup>th</sup> day of March 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Lannette Rice for a variance to reduce the required 30-foot side setback to ten feet to preserve an existing retaining wall in an RC-DEO zoning district is **GRANTED.**

**Provided, however, that:**

1. The variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**



**Michele L. LeFaivre**

**Date Mailed:** 3/11/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.